IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

Crl.MC.No. 2976 of 2007()

AGAINST THE ORDER DATED 18/09/2007 IN CMP. 1261 /2007 IN ST.400/2006 of JUDL. MAGISTRATE OF FIRST CLASS-II, HARIPAD

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PETITIONER: ACCUSED

SHARAFUDHIN,
SHAMEER MANZIL, KILIKOLLOOR, KOLLAM-14.

BY ADV. SRI.DILEEP P.PILLAI
SRI.K.N.ABHILASH

RESPONDENTS: STATE & DEFACTO COMPLAINANT

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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
KERALA HIGH COURT, ERNAKULAM.

2. SUMADATHAN, S/O.KUTTAPPAN,
VELLIKKARA VEEDU, MUTHUKULAM THEKKU P.O.,
MUTHUKULAM VILLAGE.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2976 of 2007

Dated this the 25th day of September 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. The matter has reached the stage of hearing arguments now. The petitioner filed an application to forward the cheque to the expert. The learned Magistrate, by Annexure A5 order took the view that it is not necessary to send the cheque to the expert.

2. The petitioner claims to be aggrieved by the impugned order. The petitioner wants this court to invoke the extraordinary inherent jurisdiction under Section 482 Cr.P.C to interfere with Annexure A5 order.

3. I have heard the learned counsel for the petitioner. I have perused the impugned order. I must alertly remind myself that I am called upon to invoke and exercise the extraordinary inherent powers under Section 482 Cr.P.C. Such jurisdiction has to be invoked sparingly and in exceptional circumstances in aid of justice. Has justice failed? Has there been miscarriage of justice? Has there been abuse of the process of court? These are the questions this court will be concerned with while considering the prayer for invocation of the jurisdiction under Section 482 Cr.P.C.

4. The law frowns upon challenge against interlocutory orders during the pendency of the criminal proceedings. This policy of the law is reflected clearly in the embargo under Section 397(2) Cr.P.C. Ordinarily and normally an interim order must wait for its challenge along with final order/judgment to be passed in that proceedings.

5. Exceptions are possible. But having considered all the relevant circumstances, I am not at all persuaded to agree that this is a fit case where such extraordinary inherent jurisdiction can and ought to be invoked.

6. This petition is accordingly dismissed. But I may hasten to observe that I have not chosen to express any opinion on merits on the challenge against the impugned order. I have only chosen to take the view that the order does not warrant interference by invoking the jurisdiction under Section 482 Cr.P.C. The petitioner shall be entitled to raise all his contentions before the learned Magistrate. The petitioner shall also be entitled to challenge the impugned order - Annexure A5 on merits, if such challenge be necessary after the judgment is pronounced in the trial against him.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007